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C O N F I D E N T I A L SECTION 01 OF 04 BAGHDAD 003133

SIPDIS

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SUBJECT: SUNNI ARABS MAKE A COUNTER-OFFER ON FEDERALISM AS SHIA SHOW AMBIVALENCE

Classified By: Political Counselor Robert Ford.
Reasons 1.4 (B) and (D)

11. (C) SUMMARY: Sunni Arab negotiators have put forward a detailed response to the draft constitution that marks their first substantive engagement on the issue of federalism. Iraqi Islamic Party leader Ayad al-Samara'i told us July 27 that he supports a federal system that maintains the status quo in Kurdistan and puts off regional entity formation elsewhere. There could be a one-year moratorium on creating regional entities or such mergers could move forward immediately but be subject to approval from a special commission, the National Assembly, and a national referendum. Meanwhile independent Shia parliamentarian Qasim Daoud also entertained the idea of a four-year delay on entity formation as a possible compromise so long as planning and regional constitution drafting could begin immediately. Both men were still vague on the authorities that regional entities would enjoy. Samara'i was otherwise fairly upbeat on the draft constitution text. An open Islamist, Samara'i supported the Sharia restrictions as written but said he would have no problem amending them to avoid any indication that Islam was being imposed on Iraqis. We pushed hard for Samara'i to think through the issues carefully with an eye to the hopes of his fellow negotiators and the international community. END SUMMARY.

The Sunni Counter-Offer

12. (C) Sunni Arab Constitution Committee member Ayad al-Samara'i, a member of the Iraqi Islamic Party, presented us the substance of the Sunni Arab reaction to the constitution draft released over the weekend. He went through the following key points:

- KEPING IRAQ'S NAME SIMPLE: Samara'i objected to using the words "federal" or "Islamic" in naming Iraq. He said both terms were unnecessary and carried certain bad connotations for some. Instead he argued for "The Iraqi Republic," a slight variation on the Saddam-era name "The Republic of Iraq."

-- BAN BA'ATH PRACTICE, NOT THOUGHT: Samara'i said he opposed the current language in Article 11 banning the Ba'ath Party because it bans "thought" rather than action. It is only practical to ban action, he argued, and allowing a government to ban thought, even in the form of the Ba'ath, is to open the door to oppression. Samara'i added that he believed the Ba'ath Party ought to be legalized because he felt it would be more easily controlled if out in the open. Current laws have not weakened it; they have only forced it underground and made it harder to combat.

-- ENSURING NO FORCE ON ISLAM LANGUAGE: Himself an Islamist, Samara'i had few objections to the Islamist tone of the draft document, except for language that seemed to promote Shiism, like references to the marja'ia and "Persian" minority. We warned Samara'i that declaring Islam "the principal source of law" and putting a Sharia restriction on women's rights would send an intolerant message to non-Muslims, secular Muslims, and the world community. Samara'i said he would support amending the draft to ensure that women's rights are equal and Islam is not forced on anybody. He cautioned however that Iraqi society itself is very largely Muslim and references to Islam in the text appeal to most Iraqis regardless of Western worries.

-- NAMING FEDERALISM: Samara'i argued for shifting all references to federalism to the word unionism, a synonym in Arabic without the term federalism's complications. Instead of saying "federaliyya," the document would reference "itihadiyya."

-- BANNING SECESSION EXPLICITLY: Samara'i said he considered draft language in Article 8 affirming Iraq's unity to be too weak. He had suggested, at

Kurdish protest, adding a reference that refers to the sanctity of Iraq's "international and UN-recognized borders." He also argued for a clause banning "secession under any circumstances." (Comment: Kurds have argued that he has made the constitution sound more like a forced march than a national compact, he said. End Comment)

-- KEEPING THE KURDISTAN STATUS QUO: Samara'i said he considered Kurdish semi-autonomy to be a "fact," not a negotiating point. He proposed allowing Kurds to maintain most of their current authorities.

-- KEEPING THE THREE-PROVINCE LIMIT: Samara'i and other Sunni negotiators have strongly advocated limiting future mergers to three provinces at most. Allowing the formation of larger entities would create conditions too favorable and tempting to secession, he claimed.

-- ENSURING EQUALITY BETWEEN GOVERNORATES AND REGIONAL ENTITIES: Samara'i said he would push for the constitution to delineate the authorities of regional entities and the central government without actually drawing the borders. He would then push for regional entities and governorates in Iraq to have the same authorities. If regional entities have authorities that single governorates do not possess, he said, then there will be a natural incentive for governorates to merge to gain power. Samara'i does not protest mergers, but he does object to building a system that actual incentivizes them.

-- REGIONAL AUTHORITIES: Samara'i said he thought police force control should be further decentralized. He believed some federally controlled forces should also be in place, however. He opposed the idea of allowing regions to have a veto on the entry of the armed forces into their borders. Such forces would need to transit the country regularly for training, he said. It would also be too great a limit on the sovereignty of the national government.

-- KEEPING KIRKUK SEPARATE: Samara'i said he would only support TAL Article 58 if Article 53 remains in place. (TAL Article 53 bans Kirkuk from joining with any other provinces to form a regional entity.) He said he believed that a special status for Kirkuk, like that for Baghdad, was most appropriate. He said he could only envision a referendum in the province if only 1957 residents and their descendants were allowed to vote. After 1957, too many political changes were introduced to the area, he said. Furthermore, he said that Chamchamal residents, now part of Suleimaniyya, would not be allowed to participate in the referendum even though their city fell within the boundaries of Kirkuk province in 1954. To allow them back into the province simply to vote when they have successfully integrated with Kurdistan would be to deliberately prejudice the vote. (Note: The TAL anticipates the completion of a new, fair and transparent census of Kirkuk among other disputed territories. End note)

Two Views on Delaying Federalism

13. (C) Samara'i and Shia Arab Constitution Committee negotiator Qasim Daoud both put forward visions on postponing full federalism in separate conversations with us July 27. Samara'i offered three possible ways to delay entity formation. Samara'i said he felt it was premature to allow entities to form outside Kurdistan immediately following ratification or the next elections. He proposed three paths to a final federal map:

-- OPTION A, 4-YEAR DELAY: No regional entities outside Kurdistan may be formed for one four-year election cycle. Samara'i said this would allow time "for a calm and full discussion."

-- OPTION B, LETTING A COMMISSION DECIDE: Samara'i said he thought the wisest option would be for the next National Assembly to form a commission to study the issue of federalism, Iraq's resources and geography, and propose a map that lays out an appropriate structure. He envisioned a national referendum to approve the commission's plan. This option would be quicker than the 4 year delay he said.

-- OPTION C, SEVERAL LAYERS OF APPROVAL: Samara'i said alternatively this commission could be formed as a binding arbitrator on federalism proposals. For example, if Basra sought to merge into a regional entity, the commission would review the proposal and

hear out concerns from those affected. For example, the Sunni community in Basra, now a strong 30 percent minority, would find its voice significantly diluted if Basra were to join with other neighboring Shia provinces. The commission would be able to study this concern and set conditions ensuring that the future structure and constitution of the province has adequate safeguards for minority rights. Samara'i acknowledged that the commission would also have the right to conclude that the circumstances were simply not right for merger and regional entity formation in that area in any form. Following a positive judgment, however, he said the amended proposal would go to the National Assembly for vote and to the country at large for referendum. Samara'i was specific, contrary to the TAL, in envisioning a national referendum on any regional entity proposal. The TAL would merely require a referendum of the people in those provinces directly involved in the merger.

14. (C) Qasem Daoud, meeting with Poloff and Roman Martinez, advisor to the Ambassador on constitutional issues, acknowledged that even the Shia Arab delegates are ambivalent on federalism. He said Da'wa and Sadr's faction are significantly less enthusiastic about federalism, and are divided as to whether Southern Iraq should be divided into one or more regions at all.

15. (C) Daoud said that requiring a "Transitional Period" before new federal regions could formally take shape might be an acceptable compromise. The constitution would recognize the status quo in Kurdistan while allowing - in principle - the formation of new regions from other provinces elsewhere in Iraq. Provinces could begin discussions and planning on new regions immediately, and could take tangible steps to draft regional constitutions and create the administrative infrastructure needed to assume additional authorities as a region. No new regions would actually be created, however, until after the completion of the first election cycle in four years. Daoud explained that this approach would meet the Shi'a demand for parity with Kurdistan while assuaging Sunni fears about the immediate dissolution of Iraq.

16. (C) Daoud emphasized, however, that the U.S. would need to play a strong role in urging Iraqis - and particularly Sunni Arabs - to agree to the formula. He also made clear that new regions would need to have the same range of authorities exercised by the Kurdish Regional Government (including control over the police forces), and may also need to be given a share of the natural resources located within the region.

COMMENT

17. (C) The federalism discussion is turning more practical and detailed, which itself is cause for minor celebration. The Sunnis are saying the word; itself progress, and the proposals listed above were put forwarded in a written paper. These negotiators, Daoud included, have still not come head to head with the issue of regional authorities. Divided opinion among Shia Arab representatives may lead to an unlikely Fadila-Da'wa-Sunni Arab alliance aimed at pushing a full federalist vision off for the time being. This possibility has already frustrated some participants to the talks who have a bolder federalist imagination. Independent Shia negotiator Ali Dabagh left the room and passed Poloff grumbling that the constitution would "say the word" federalism, but nothing more.

18. (C) We are pushing the sides to continue to delve deeper and are making clear that any moves that threaten Iraq's unity or pull resource ownership out of the hands of the federal government are steps too far. That mantra, plus our presence on the sidelines as each side emerges from the room, is adding an urgency and realism to a discussion that seems to be picking up steam.

19. (U) REO HILLA, REO BASRA, REO MOSUL, and REO KIRKUK, minimize considered.

Khalilzad